

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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| | X |
| IN RE: BENJAMIN KLEIN, | : |
| | : |
| Debtor, | : |
| | : |
| BENJAMIN KLEIN, | X |
| | : |
| Plaintiff, | : |
| | : |
| -against- | : |
| MOSES LEIB (MOSES) WITRIOL, YITZCHOK DOV (ISAAC, GEORGE) FISCH, RABBI GABRIEL STERN, ZALMAN DOV KLEIN, MALKY FISCH, DINA KLEIN, ARYEH GUTMAN, SCHLOMO GUTMAN, ARON EAGLE, JACOB (YOSSI) EAGLE, ESTHER KLEIN, AVRAHAM LEHRER, (& UPON LEAVE GRANTED) JOSEPH MARIA, and DOES 1-100, | : |
| | : |
| Defendants. | : |
| | X |

**NOTICE OF MOTION FOR AN ORDER EXTENDING EAGLE DEFENDANTS' TIME
TO ANSWER OR MOVE WITH RESPECT TO THE COMPLAINT PURSUANT TO
RULE 9006(B)(1) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

PLEASE TAKE NOTICE that upon the Declaration of Nicholas Fortuna, executed February 21, 2019, the accompanying Memorandum of Law, and all of the papers and pleadings had herein, Defendants ARON EAGLE and JACOB (YOSSI) EAGLE (the "Eagle Defendants") shall move at a hearing to be held before the Hon. Robert D. Drain, United States Bankruptcy Judge, at the United States Bankruptcy Court, Southern District of New York, 300 Quarropas Street, White Plains, New York, on March 13, 2019 at 10:00 am in the forenoon of that day, or as soon thereafter as counsel can be heard, for an Order, pursuant to Rule 9006(b)(1) of the Federal

Rules of Bankruptcy Procedure, extending the time for the Eagle Defendants to answer or move with respect to Plaintiff BENJAMIN KLEIN's Adversary Complaint, and for such other and further relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief sought in the motion, must be in writing setting forth the facts and authorities upon which an objection is based, and served so as to be received by the attorneys for the Eagle Defendants no later than **seven (7) days prior to the Hearing.**

Dated: February 21, 2019

ALLYN & FORTUNA LLP

By:


Nicholas Fortuna
Attorneys for Aron Eagle and Jacob Eagle
1010 Avenue of the Americas, 3rd Floor
New York, New York 10018
(212) 213-8844

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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|---|--------------------------|
| X | |
| IN RE: BENJAMIN KLEIN, | Chapter 13 |
| Debtor, | Case No.: 18-23417-RDD |
| X | |
| BENJAMIN KLEIN, | |
| Plaintiff, | |
| -against- | ADV. P. NO. 19-08200-RDD |
| MOSES LEIB (MOSES) WITRIOL, YITZCHOK DOV (ISAAC, GEORGE) FISCH, RABBI GABRIEL STERN, ZALMAN DOV KLEIN, MALKY FISCH, DINA KLEIN, ARYEH GUTMAN, SCHLOMO GUTMAN, ARON EAGLE, JACOB (YOSSI) EAGLE, ESTHER KLEIN, AVRAHAM LEHRER, (& UPON LEAVE GRANTED) JOSEPH MARIA, and DOES 1-100, | |
| Defendants. | |
| X | |

DECLARATION OF NICHOLAS FORTUNA

NICHOLAS FORTUNA, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am a member of the firm Allyn & Fortuna, LLP, attorneys for Defendants AARON EAGLE and JACOB (YOSSI) EAGLE (the “Eagle Defendants”). I submit this declaration in support of the Eagle Defendants’ motion for an Order, pursuant to Rule 9006(b)(1) of the Federal Rules of Bankruptcy Procedure, extending the time for the Eagle Defendants to answer or move with respect to Plaintiff BENJAMIN KLEIN (“Plaintiff”)’s Adversary Complaint.

2. The Eagle Defendants' motion should be granted because their default is excusable and they have a meritorious defense to the claims in the Adversary Complaint. A copy of the Adversary Complaint is annexed here as **Exhibit A**.

3. The Eagle Defendants were served with the Summons and Adversary Complaint by first class mail on January 17, 2019. A copy of the Certificate of Service is annexed here as **Exhibit B**.

4. I also submit this Declaration in opposition to Plaintiff's Request for Certificate of Default, filed against the Eagle Defendants on February 14, 2019.

5. The Request for Certificate of Default with respect to the Eagle Defendants should be denied pursuant to Rule 55(c) of the Federal Rules of Civil Procedure. A copy of the Request for Certificate of Default is annexed here as **Exhibit C**.

Dated: February 21, 2019

ALLYN & FORTUNA LLP

By:


Nicholas Fortuna
Attorneys for Aron Eagle and Jacob Eagle
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